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Northwest Energy Control Systems, Inc. and International Brotherhood of Electrical Workers, Local 46, AFL-CIO. Case 19-CA-24205

March 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge and amended charge filed by the Union on October 31, 1995, and January 8, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 16, 1996, against Northwest Energy Control Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On February 27, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On March 1, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 15, 1996, notified the Respondent that unless an answer were received by February 22, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Washington corporation with an office and place of business in Snohomish, Washington, where it is engaged in the business of electrical contracting. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$500,000, and sold and shipped or provided services from its facilities within the State of Washington to customers outside that State, or sold or shipped goods or provided services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000. In addition, during this same period, the Respondent, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside that State or from suppliers within the State which in turn obtained such goods and materials directly from sources outside that State. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Commencing about mid-September 1995, and continuing thereafter during their employment with the Respondent, the Respondent assigned employees Christopher Swenholt and Tony Boyd, who had previously been employed alongside other electrician employees, to isolated work locations on the subcontract project for J. R. Abbott Construction, Inc. in the construction of a Wal-Mart store in Port Angeles, Washington. The Respondent took this action in response to efforts by Boyd and Swenholt to convince other employees to support the Union and their repeated statements in favor of unionization of the Respondent's work force and to discourage support or membership in the Union among the Respondent's employees.

As a result of the Respondent's actions described above, Swenholt and Boyd lost opportunities for overtime work during the month of October 1995 that were afforded other employees working on the Wal-Mart project. Alternatively, the Respondent deliberately failed to assign overtime work to Swenholt and Boyd when it was being made available to other employees in retaliation for their prior union support activities and

to discourage such membership and support among its employees.

During the period from October 6 through 10, 1995, Swenholt and Boyd participated in a concerted strike and picketing against the Respondent at the Port Angeles Wal-Mart site, using picket signs expressing their dissatisfaction with wages and benefits paid by the Respondent. About October 10, 1995, the Respondent terminated the employment of Swenholt and Boyd because of their failure to report to work on October 9 and 10. The Respondent terminated Swenholt and Boyd because of their protected concerted activities and to discourage such activities and support for the Union among its employees. This action caused an extension of the strike and converted it from an economic strike to an unfair labor practice strike.

About October 10, 1995, a few minutes after Swenholt and Boyd were terminated, and before the Respondent had hired any replacement employees for Swenholt or Boyd, they submitted to the Respondent unconditional offers to return to work. The Respondent took these offers to return under consideration for a brief period of time then offered Swenholt and Boyd reinstatement, but under the condition that they cease and desist from statements or actions in support of the Union or their demands for improvements in wages and benefits, particularly in the presence of other electrician employees. Swenholt and Boyd each refused to return to work under these conditions, but left standing their offers to return to work if a bona fide offer of employment was made. The Respondent conditioned the offers of reinstatement to Boyd and Swenholt for the purposes of discouraging support for or membership in the Union among the employees. The Respondent's conditional offer of reinstatement to Swenholt and Boyd did not constitute a valid and unconditional acceptance of the offer to return to work made by Swenholt and Boyd.¹

CONCLUSIONS OF LAW

By assigning Swenholt and Boyd to work in isolated locations, failing to assign them overtime work, terminating them and failing and refusing to accept their unconditional offers to return to work, the Respondent has discriminated and is continuing to discriminate in regard to the hire, tenure, and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

¹ The complaint also alleges that about September 1995 the Respondent told an individual employee that should the Union succeed in organizing the Company, the owner would shut the Respondent down or words to that effect. This statement is not, however, alleged to be an unfair labor practice.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by assigning Swenholt and Boyd to work in isolated locations, failing to assign them overtime work, terminating them, and failing and refusing to accept their unconditional offers to return to work, we shall order the Respondent to rescind the discriminatory work assignment, offer each discriminatee immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings, including overtime, and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done. Finally, inasmuch as it appears from the record that the Respondent may no longer be in business, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the Respondent's employees and former employees.

ORDER

The National Labor Relations Board orders that the Respondent, Northwest Energy Control Systems, Inc., Snohomish, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assigning employees to isolated work locations because employees try to convince other employees to support International Brotherhood of Electrical Workers, Local 46, AFL-CIO or because of their repeated statements in favor of unionization of the Respondent's work force or to discourage support or membership in the Union.

(b) Deliberately failing to assign overtime work to employees in retaliation for their prior union support activities or to discourage such membership or support among its employees.

(c) Terminating employees or failing or refusing to accept their unconditional offers to return to work, because they participate in a concerted strike or picketing or other protected concerted activities or to discourage such activities or support for the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the discriminatory work assignments to Christopher Swenholt and Tony Boyd and offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Christopher Swenholt and Tony Boyd whole for any loss of earnings, including overtime, and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Expunge from its files any and all references to the unlawful discharges and notify the discriminatees in writing that this has been done.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail signed copies of the notice marked "Appendix"² to all employees and former employees at their last known address and to the Union. Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 29, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT assign employees to isolated work locations because employees try to convince other employees to support International Brotherhood of Electrical Workers, Local 46, AFL-CIO or because of their repeated statements in favor of unionization of our work force or to discourage support or membership in the Union.

WE WILL NOT deliberately fail to assign overtime work to employees in retaliation for their prior union support activities or to discourage such membership or support among our employees.

WE WILL NOT terminate employees or fail or refuse to accept their unconditional offers to return to work, because they participate in a concerted strike or picketing or other protected concerted activities or to discourage such activities or support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the discriminatory work assignments to Christopher Swenholt and Tony Boyd and offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Christopher Swenholt and Tony Boyd whole for any loss of earnings, including overtime, and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL expunge from our files any and all references to the unlawful discharges and notify the discriminatees in writing that this has been done.

NORTHWEST ENERGY CONTROL SYSTEMS, INC.